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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SWITCH, LTD., a Nevada limited liability  
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY; and  
DOES 1 through 10; ROE ENTITIES 11 through  
20, inclusive,

Defendants.

CASE NO.: 2:17-cv-02651-GMN-EJY

**STIPULATED AMENDED  
DISCOVERY PLAN AND  
SCHEDULING ORDER**

**(FOURTH REQUEST)**

Pursuant to LR IA 6-1 and LR 26-4, counsel for Plaintiff SWITCH, LTD. (“Plaintiff”) and Defendants STEPHEN FAIRFAX and MTECHNOLOGY (“Defendants”) hereby submit this Stipulated Amended Discovery Plan and Scheduling Order to extend the current discovery deadlines.

The parties respectfully make this fourth request for continuance of the deadlines by ninety (90) days in good faith due to restrictions related to COVID-19.

1 In support of this Stipulation, the parties state as follows:

2 **1. Discovery Completed to Date**

3 The parties have each served, and responded to, multiple requests for written discovery,  
4 including requests for production, requests for admission, and interrogatories. While all parties  
5 initially objected to written discovery due to the lack of a protective order to protect sensitive  
6 documents from disclosure, they agreed upon the language of a Stipulated Protective Order, which  
7 they filed on November 19, 2019 [Dkt. #64]. The parties have each supplemented their discovery  
8 responses and have met and conferred with respect to alleged deficiencies in those responses. Plaintiff  
9 is still awaiting Defendants' supplemental responses and has filed a Motion to Compel Production  
10 of Documents against third party Jones Lang LaSalle to corroborate Defendant's production.  
11 Plaintiff has served additional third party subpoenas as well. With regard to Switch's document  
12 production, the parties' views are not aligned.

13 PLAINTIFF'S POSITION: Due to the sensitive nature of documents to be produced by  
14 Switch, and the need to safeguard Switch's mission critical technology infrastructure services, the  
15 parties agreed to an onsite production and inspection of documents and materials.

16 DEFENDANTS' POSITION: Defendants' counsel was willing to review Switch's  
17 documents onsite prior to the COVID-19 pandemic but does not believe onsite review to be a  
18 feasible or appropriate requirement during this crisis, particularly given the stay-at-home order issued  
19 by the State of Nevada.

20 Defendants served an initial expert report, and Plaintiff served a rebuttal expert report. On  
21 March 20, 2020, Plaintiff noticed the depositions of Defendant Stephen Fairfax and the 30(b)(6)  
22 witness for Defendant MTechnology to take place on April 8 and 9, 2020. Given the current  
23 restrictions regarding gatherings and travel due to the COVID-19 pandemic, the parties are working  
24 on establishing mutually acceptable dates for deposing each other's witnesses. Due to the complicated  
25 and highly technical nature of this case, the parties wish to depose witnesses in person after social  
26 distancing guidelines have been lifted.

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1     **2.     Discovery Remaining to be Completed**

2             Pursuant to the meet and confer conferences of the parties, Defendants are in the process of  
3 supplementing prior written discovery, and the parties are working together regarding access to the  
4 production of sensitive documents respecting Switch's mission critical technology infrastructure  
5 needs and concerns. Switch is also awaiting production by third parties like Jones Lang LaSalle.

6             Prior to the pandemic, Switch offered to produce its production onsite, and the parties agreed  
7 that Defendants' counsel would review Plaintiff's production of documents onsite, at Plaintiff's Tier  
8 5 Platinum data center campus. Switch believes current onsite review remains possible although  
9 subject to required social distancing as the attorney would be alone in the on-site, secure room as  
10 they conducted the review. Switch is a mission critical, technology infrastructure provider authorized  
11 to continue to operate by the U.S. Department of Homeland Security's Critical Infrastructure sector  
12 per Presidential Policy Directive 21 (PPD-21) which identifies 16 critical infrastructure sectors,  
13 including power, telecommunications and data centers. Defendants do not believe that it is  
14 appropriate for its counsel to personally appear at Switch's operating facility during the COVID-19  
15 pandemic, given the social distancing guidelines currently in place in the State of Nevada and across  
16 the United States. Defendants do not dispute that the federal government has classified the operation  
17 of Switch's data centers as an essential activity. However, Defendants' counsel's review of Switch's  
18 documents at Switch's data center in a civil matter is not essential. As such, Defendants desire to  
19 establish an alternate method to review Switch's documents that will assuage Switch's concerns and  
20 simultaneously allow the parties to abide by the State of Nevada's stay-at-home order. Defendants  
21 and their counsel are currently exploring potential options to propose to Switch and, if necessary,  
22 this Court.

23             Finally, as noted above, the parties are working together to establish a deposition schedule  
24 following the conclusion of travel and gathering restrictions imposed due to the COVID-19  
25 pandemic. Plaintiffs would like to proceed with video depositions. Due to the complicated and highly  
26 technical nature of this case, Defendants wish to depose Plaintiff's key witnesses in person after social  
27 distancing guidelines have been lifted. Defendants are willing to discuss taking the depositions of  
28 secondary witnesses via videoconference.

### 3. Reasons why Discovery has not been Completed

Good cause exists to extend the discovery deadlines in this case. “Good cause to extend a discovery deadline exists ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’”<sup>1</sup> Given that the protective order has now been filed, the parties have fully engaged in the discovery process, and continue to produce documents.

At the moment and for the foreseeable future, all of the parties and their counsel are working from home and self-isolating as required by their states of residence. Plaintiff scheduled depositions; however, given the pandemic, the parties agreed to continue these depositions. The parties are currently discussing scheduling the depositions of each other, third parties, and expert witnesses. Their different positions regarding the way depositions should be conducted is detailed above.

The response to the COVID-19 pandemic has made moving forward with the discovery process difficult. The parties cannot say with any degree of certainty when the restrictions imposed due to the Coronavirus will be lifted. If the restrictions continue longer than the next sixty (60) days, they may be required to seek this Court’s guidance regarding the completion of discovery or an additional extension of the discovery period.

### 4. Proposed Schedule for Completing all Remaining Discovery

The parties hereby stipulate to move the discovery deadlines by ninety (90) days, including the deadlines for initial and rebuttal expert disclosures, as follows:

Scheduled Event	Current Deadline [Dkt. #62]	Proposed Deadline
Fact Discovery Cutoff	April 30, 2020	<b>July 29, 2020</b>
Initial Expert Disclosures	June 1, 2020	<b>September 1, 2020</b>
Rebuttal Expert Disclosures	July 1, 2020	<b>September 29, 2020</b>
Dispositive Motions	July 31, 2020	<b>October 29, 2020</b>
Pretrial Order	August 31, 2020	<b>November 30, 2020</b> - this deadline is suspended if a dispositive motion is timely filed.

<sup>1</sup> *Derosa v. Blood Sys., Inc.*, No. 2:13-CV-0137-JCM-NJK, 2013 WL 3975764, at \*1 (D. Nev. Aug. 1, 2013)(internal citations omitted).

IT IS SO STIPULATED.

DATED this 10<sup>th</sup> day of April, 2020.

DATED this 10<sup>th</sup> day of April, 2020.

**SWITCH, LTD.**

**RANDAZZA LEGAL GROUP, PLLC**

/s/ Samuel Castor

/s/ Ronald D. Green

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### **ORDER**

IT IS HEREBY ORDERED that the scheduling in this case will proceed as follows:

Scheduled Event	Proposed Deadline
Discovery Cutoff	July 29, 2020
Initial Expert Disclosures	September 1, 2020
Rebuttal Expert Disclosures	September 29, 2020
Dispositive Motions	October 29, 2020
Pretrial Order	November 30, 2020 - this deadline is suspended if a dispositive motion is timely filed.

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

DATED